

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., ) CIVIL NO. CV 04-00124  
a Japanese corporation, ) ACK/BMK  
Plaintiff, )  
vs. )  
QK HOTEL, LLC, a Hawai'i )  
limited liability company, )  
et al., )  
Defendants, )  
and )  
FRANKLIN K. MUKAI, )  
Third-Party )  
Plaintiff, )  
vs. )  
SPORTS SHINKO (USA) CO.; LTD., )  
a Delaware corporation, et al., )  
Third-Party )  
Defendants. )  
\_\_\_\_\_  
SPORTS SHINKO (USA) CO., LTD., ) CIVIL NO. CV 04-00125  
a Delaware corporation, ) ACK/BMK  
Plaintiff, )  
vs. )

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PUKALANI GOLF CLUB, LLC, a )  
Hawai'i limited liability )  
company, et al., )  
Defendants, )  
and )  
FRANKLIN K. MUKAI, )  
Third-Party )  
Plaintiff, )  
vs. )  
SPORTS SHINKO CO., LTD., )  
a Japan corporation, et al., )  
Third-Party )  
Defendants. )  
\_\_\_\_\_  
SPORTS SHINKO (USA) CO., LTD, a ) CIVIL NO. CV 04-00126  
Delaware corporation, ) ACK/BMK  
Plaintiff, )  
vs. )  
KIAHUNA GOLF CLUB, LLC, )  
a Hawai'i limited liability )  
company, et al., )  
Defendants, )  
and )  
FRANKLIN K. MUKAI, )  
Third-Party )  
Plaintiff, )

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vs. )  
 )  
 SPORTS SHINKO CO., LTD., )  
 a Japan corporation, et al., )  
 )  
 Third-Party )  
 Defendants. )  
 \_\_\_\_\_ )  
 )  
 SPORTS SHINKO CO., LTD., a ) CIVIL NO. CV 04-00127  
 Japanese corporation, ) ACK/BMK  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 OR HOTEL, LLC, a Hawai'i )  
 limited liability company, )  
 et al., )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 FRANKLIN K. MUKAI, )  
 )  
 Third-Party )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SPORTS SHINKO (USA) CO., LTD., )  
 a Delaware corporation, et al., )  
 )  
 Third-Party )  
 Defendants. )  
 \_\_\_\_\_ )  
 )  
 SPORTS SHINKO (USA) CO., LTD., ) CIVIL NO. CV 04-00128  
 a Delaware corporation, ) ACK/BMK  
 )  
 Plaintiff, )

vs. )  
 )  
MILILANI GOLF CLUB, LLC, )  
a Hawai'i limited liability )  
company, et al., )  
 )  
Defendants, )  
 )  
and )  
 )  
FRANKLIN K. MUKAI, )  
 )  
Third-Party )  
Plaintiff, )  
 )  
vs. )  
 )  
SPORTS SHINKO CO., LTD., )  
a Japan corporation, et al., )  
 )  
Third-Party )  
Defendants. )  
 )

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**DECLARATION OF DAVID KLAUSNER**

I, DAVID KLAUSNER, make this Declaration of my own personal knowledge:

1. I am an adult resident of the State of California, over the age of eighteen (18) years, and I am competent to make this Declaration.

2. I am an independent computer consultant retained by Alston Hunt Floyd & Ing to advise and assist counsel in this action. I make this Declaration of my own

personal knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the facts stated in this Declaration.

3. I obtained my Bachelor of Arts in Mathematics from Brooklyn College in 1968, and my Master of Science in Electrical Engineering from the Polytechnic Institute of Brooklyn in 1974. I have over 37 years of software development, consulting, management, and expert testimony experience in all aspects of the computer field, from micros to mainframes, and in all areas of computer programming. I am experienced as an engineer, software developer, supervisor, project manager, department manager, middle manager, and company executive.

4. I am also experienced in forensic investigation, including data recovery, and reverse-engineering of computer programs. From 1992 to the present, I have testified as an expert witness and I have also rendered opinions concerning forensic investigation of computer programming in dozens of matters in both State and

Federal courts. A true and correct copy of my *curriculum vitae* is attached hereto as Exhibit K-A.

5. I was provided with a Western Digital hard drive, S/N WM949 127 5640, dated 13 Aug 2000 (the "Drive") by Glenn T. Melchinger. A true and correct photocopy of the label on the Drive is attached as Ex. "K-B".

6. I created a forensic bit by bit image (the "Image") of the Drive (every "zero" and "one" bit of the Drive) using a program called EnCase and forensic data recovery equipment. I did not "boot" up the Drive; I made no alterations to the Drive when I created this image of the Drive.

7. I analyzed the Drive Image. In an "unallocated cluster," which is slack space typically designated by the operating system on the Drive to be reused and overwritten, was the text attached in Ex. "K-C". The text was found by the EnCase program, and was located in Unallocated Cluster file 5 produced by the EnCase program, which could be viewed at (approximately) line 2709220 to 2709513 of that file using UltraEdit v.11.1. (Some line renumbering occurs each time the unallocated cluster files

are opened, due to their 660 MB size, but a text search for "November 26, 2001" pulls up the relevant file from this Unallocated Cluster.)

8. The text in the attached Ex. "K-C" was created by simply cutting and pasting the text from the Unallocated Cluster into a Microsoft Word file.

9. It appears to me that this file was once an active document file on the Drive, but was designated for deletion by the computer's operating system. Despite this, as is typical, the file's text and some code remained in the "slack space" on the Drive.

***I declare under penalty of perjury that the foregoing is true and correct.***

Executed on: Redwood City, California, February 15, 2006.

  
DAVID KLAUSNER